UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GeBBS HEALTHCARE SOLUTIONS, INC.
Plaintiff,

Hon. Gregory H. Woods

CIVIL No: 16-cv-02206-GHW

v.
ORION HEALTHCORP, INC.
Defendant.

AFFIRMATION

AFFIRMATION OF PLAINTIFF'S COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLIAM FOR FAILURE TO STATE CAUSE OF ACTION

I, Prema Roddam, Esq. of full age and the attorney for the Plaintiff in this matter state:

1. I am an attorney for Chugh, LLP, attorneys for the Plaintiff, GeBBS Healthcare Solutions Inc. I submit this Affirmation in support of the Motion to Dismiss Defendant's Counterclaims for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and, granting the Plaintiff such other relief that the Court deems just, proper and equitable.

2. I am fully familiar with the facts and circumstances of this action based upon the review of the files and documents provided by the Plaintiff and maintained by my office in this matter.

3. The original Master Services Agreement (hereinafter "MSA") was between the GeBBS (hereinafter "GeBBS" or "Plaintiff") predecessor GeBBS Healthcare Solutions and Orion Healthcorp, Inc. (hereinafter "Orion" or "Defendant") predecessor RMI Physician Services Corporation (hereinafter "RMI") (**Exhibit A**- MSA dated June 22, 2006). This original was

later amended to Addendum 3 (hereinafter "Addendum") as it exists now between the Plaintiff and Defendant, about October 25, 2013 and became effective on April 1, 2014 (**Exhibit B**- Addendum dated October 25,2013). Section 9(k) of the Addendum provides that this agreement supersedes all prior agreements and amendments and is thereby the controlling agreement between the parties.

4. Orion retained GeBBS to provide certain revenue cycle management services for Orion's clients. (Section 2 of Addendum- **Exhibit B**). Orion agreed to pay GeBBS 28% of the revenue Orion received arising from the Services performed by GeBBS (Section 6 of Addendum – **Exhibit B**). The terms of the MSA begun as of April 1, 2014 and extend until April 1, 2016, unless terminated in accordance with Section 5 (Section 4 of Addendum- **Exhibit B**).

5. Section 5 of the Addendum (**Exhibit B**) provides in part that if Orion fails to make payment to GeBBS when payment is due, "and does not cure the default within ten (10) days after receiving written notice of the default, then GeBBS may, by giving written notice to [Orion], terminate this Addendum, and cease providing Services, as of a date specified in the notice of termination."

6. Plaintiff performed the services in accordance with the Addendum but did not receive any notice of dispute regarding the same from the Defendant. Plaintiff was either underpaid or refused payment by the Defendant despite its full and complete performance of its obligations per the Addendum. As of December 9, 2015, the sum of the amounts due and owed to GeBBS was $777,022.05, with additional amounts not-yet-invoiced for November and December of 2015.

7. On December 9, 2015, GeBBS provided written Notice of Default to Orion via facsimile and certified mail (**Exhibit C**-Notice of Default dated December 9,2015). Orion provided no written response to the Notice of Default nor did it dispute any of the invoices raised by Plaintiff. Instead, Orion made a partial payment of $166,266.85, still leaving a shortfall of $610,755.20. As of December 21, 2015, Plaintiff continued to perform the services in accordance with the Addendum but did not receive any notice of dispute regarding the same from the Defendant. On December 21, 2015, pursuant to Section 5(c) of the Addendum, GeBBS provided written Notice of Termination (**Exhibit D**-Notice of Termination dated December 21,2015).
8. To date, the amounts invoiced, due and payable to GeBBS are in the sum of $1,064,000, including those amounts due and owing for the Services performed in November and December of 2015.
9. The Plaintiff herein then filed a Complaint for Breach of Contract before this Honorable Court on March 24, 2016, seeking damages in the amount of $1,064,000.
10. The Defendant submitted its Answer and Counterclaims on September 6, 2016 and its First Amended Answer and Counterclaims on October 11, 2016.
11. Count I of the Defendant's counterclaims dated October 11, 2016, refer to alleged breach of contract by the Plaintiff involving Nonperformance. The Plaintiff was not made aware of any misgivings that the Defendant had as regards the Plaintiff's performance under the Addendum. Furthermore, the content of this counterclaim is speculative at best and fails to specify the factual basis of its reliance.
12. Count II of the Defendant's counterclaims October 11, 2016, refer to an alleged breach of contract by the Plaintiff involving improper termination by the Plaintiff. While stating that

the termination by Plaintiff was not in accordance with Paragraph 5 (c) of the Addendum, the Defendant fails to state how Plaintiff's termination was in fact improper. Plaintiff has provided sufficient documentation to prove that the termination was proper and in accordance with the Addendum between the parties (**Exhibit B**).

13. Count III of the Defendant's counterclaims October 11, 2016, relate to an alleged fraud by the Plaintiff. While the allegation of the counterclaim provides no specificity regarding the elements of fraud, the Defendant simply failed to establish the facts that support such an allegation.

14. Even if the court were to take the Defendant's recitation of facts as true, they are still insufficient to support their claims per the legal threshold under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an Order dismissing Defendant's Amended Counterclaims dated October 11, 2016 for failure to state a claim upon which relief may be granted.

I certify that the foregoing statements made by me are true, based on the information received by me from the Plaintiff. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: 11/21/2016 Prema Roddam

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